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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Container Products Corporation

File: B-232953

Date: February 6, 1989

DIGEST

1. Award is not shown unreasonable where contrary to protester's objection that regulatory requirement for strong tight containers utilized in shipping hazardous materials was not met, record indicates requirement was met.

2. General Accounting Office (GAO) will not consider argument that reading of solicitation specifications in a more restrictive manner is necessary to meet the government's needs, since GAO's role in resolving bid protests is to ensure that statutory requirements for full and open competition have been met, and protester's interest in benefiting from more restrictive specifications is not protestable under this bid protest function.

DECISION

Container Products Corporation protests a subcontract award to M & M Industries under solicitation No. 61-KL551, issued by Martin Marietta Energy Systems, Inc., a prime contractor operating and managing the Department of Energy's (DOE's) Oak Ridge, Tennessee, facilities.

The solicitation sought offers to supply 675 steel containers for the disposal of dry, solid, low-level radioactive waste. The protester contends that the containers offered by M & M Industries do not meet the solicitation requirements for container closure.

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We deny the protest.^{1/}

The solicitation required "strong tight" steel containers with a 90 cubic foot capacity, and provided that the containers were to be in compliance with the Department of Transportation (DOT) regulations governing containers for low specific activity (LSA) materials, as contained in 49 C.F.R. § 173.24 (1987). (LSA materials include objects of nonradioactive material externally contaminated with radioactive material, provided that the radioactive material is not readily dispersible and the surface contamination does not exceed certain measurements. See 49 C.F.R. § 173.403(n)(5).) These regulations provide that hazardous materials must be securely packaged in strong, tight packages, and require the packages to be constructed so that under normal transportation conditions there will be no significant release of hazardous materials to the environment, and the packaging will remain effective. 49 C.F.R. § 173.24(a)(1). In addition, the regulations provide that closures shall be adequate to prevent inadvertent leakage of the contents under normal transportation conditions, and that gasketed closures should be fitted with gaskets of efficient material that will not be deteriorated by the contents of the container. 49 C.F.R. § 173.24(c)(6).

On the June 16, 1988 closing date for receipt of offers, Martin Marietta received five offers. M & M's offer of \$289,156.50 was low and Container Products' offer of \$296,325 was second low. M & M's offer, including drawings, was determined to be in compliance with the specifications, and thus technically acceptable. Consequently, on June 27, the subcontract was awarded to the firm. Container Products' protest to our Office was filed after an initial protest to the agency was denied. All deliveries under the subcontract have been completed.

^{1/} Although our Office generally will not review the award of subcontracts by government prime contractors, we will review such awards where made "by or for" the government. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(10) (1988). We consider contractors that manage and operate DOE facilities to be acting "for" the government, Sygnatron Protection System, Inc., B-225441.2, Nov. 19, 1986, 86-2 CPD ¶ 593, which appears to be the case here; the parties do not dispute that Martin Marietta provides large-scale comprehensive management services to the government with on-going purchasing responsibility.

Container Products contends that M & M's container closure with two 1/4 by 20 inch bolts on opposite sides and two locks or seals on the other sides will not prevent the release of dispersible radioactive materials and thus should have been determined unacceptable. The protester complains that M & M's container should have lid-to-body gaskets or other similar provisions to hold the 6-foot by 4-foot metal lid in place. According to the protester, based on the firm's own past experience, a minimum of 14 lid-to-body gasketed locking devices are required to prevent escape of any loose dispersible contamination in LSA waste. Container Products essentially asserts that if the agency's interpretation prevails, more stringent requirements for containers utilized in shipping LSA materials are necessary to prevent release of dispersible particles.


DOE disagrees and responds that M & M's container, which included a one-piece lid fitted to a protrusion around the perimeter of the container body and a bolted closure system, as previously described, was determined to be in full compliance with the requirements for strong tight containers and a positive locking closure system. The agency reports that M & M's offered container closure was specifically determined sufficient to prevent inadvertent leakage of contaminants, since some intentional effort must be made to open the container. According to the agency, considering the intended container contents--dry, solid waste material, e.g., compacted metal drums and cans, paper, and wood that are not inherently radioactive, but that have been exposed to and contaminated by radioactive material--there is no danger of significant release of hazardous materials because there will not be a significant amount of radiation hazard present in the entire contents of any one package. DOE concludes that the container and the closure system offered by M & M met the solicitation requirements and are adequate to contain the class of hazard involved.

We find nothing unreasonable in the DOE's interpretation of the strong tight requirements for LSA containers, or in Martin Marietta's and the agency's determination that M & M's containers meet these requirements. Contrary to the protester's position, the applicable regulations do not require gasketed closures, and nowhere indicate that this type of closure on M & M's containers is unacceptable for LSA materials. Thus, Martin Marietta had no basis for rejecting M & M's containers as inconsistent with the solicitation requirements. See 49 C.F.R. § 173.24(c)(6).

We view Container Products' protest as essentially arguing that the specifications should be read or applied in a more restrictive manner, and that the agency's statement of its

needs as reflected in the strong tight requirements is not sufficiently restrictive. However, our role in resolving bid protests is to ensure that the statutory requirements for full and open competition have been met. Thus, a protester's presumable interest as a beneficiary of a more restrictive reading of specifications is not protestable under our Regulations absent evidence of fraud or willful misconduct on the part of procurement officials. See HEI, Inc., B-228482, Jan. 25, 1988, 88-1 CPD ¶ 68. No such evidence has been offered. Similarly, we will not consider a protest that an agency requires more restrictive specifications to meet its minimum needs. Vacco Industries, B-232146, Nov. 17, 1988, 88-2 CPD ¶ 487.

Accordingly, we deny the protest.2/


James F. Hinchman
General Counsel

2/ Initially, the protester also complained that the specification for dowing containers with 6 millimeter plastic at the delivery site after unloading was inconsistent and confusing. In its comments to the agency report, the protester did not respond to the agency's contention that this protest issue was untimely raised after the solicitation closing date. Therefore, we consider the protester to have abandoned this protest ground. PacOrd, Inc., B-224249, supra.